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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1061

W. W. HINCHLIFFE,

Petitioner,

vs.

THE TEXAS COMPANY, OHIO OIL COMPANY, AMERADA OIL CORPORATION, DEEP ROCK OIL CORPORATION

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS, AT AUSTIN, AND BRIEF IN SUPPORT THEREOF.

TOMAS G. POLLARD,
W. DEWEY LAWRENCE,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1061

W. W. KINCHLIFFE,
Petitioner and Appellant below,

vs.

THE TEXAS COMPANY, OHIO OIL COMPANY, AMERADA OIL CORPORATION, DEEP ROCK OIL CORPORATION
Respondents and Appellees below

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS, AT AUSTIN.

To the Honorable the Supreme Court of the United States:

Your petitioner respectfully shows:

I

Summary Statement of the Matter Involved

This is an action in the nature of an appeal from an order of the Railroad Commission of Texas under its Rule

37 granting your petitioner, W. W. Hinchliffe, the right to drill wells Nos. 3 and 4 on his leasehold in the East Texas Oil Field in order to prevent waste and confiscation. The suit was instituted in the District Court of the 126th Judicial District of Texas, Travis County, Texas, by the respondents against the petitioner and the Railroad Commission of Texas, alleging such order of the Railroad Commission was void and should be set aside because not supported by evidence, and that neither of the wells so granted was necessary to prevent waste or to prevent confiscation of petitioner's property.

The petitioner in defense pleaded, among other defenses, as follows:

> 1. That the Railroad Commission of Texas is the agency charged by law with the duty of administration of Rule 37, and that such agency in the administration of such rule had construed same as permitting an exception to be granted under the terms of such rule to applicants upon a showing of a prevention of waste by the increasing of the ultimate recovery of oil from the drilling and production of such well; that this amounted to a practical construction of the rule and such practical construction was plead in bar to the suit (R. 22).
>
> The plaintiffs specially excepted to the allegations of defendant's answer setting up this special defense on the grounds (a) the allegations were irrelevant, immaterial and prejudicial, and (b) the allegations were inconsistent with the allegations that said rule is invalid, and defendant may not attack the rule and at the sametime construe it (R. 33).
>
> The trial court sustained the exception of the plaintiffs to said allegations, thereby depriving the defendant of offering any testimony in support of this special defense, and the petitioner reserved an exception to such ruling (R. 39).

2. That a vast number of permits in exception to Rule 37 had been granted in the East Texas field upon the ground and reason that such permits would respectively increase the ultimate recovery of oil solely by reason of the fact that the more wells that are drilled the greater will be the recovery of oil from such field; that such wells are now operating and will continue to do so during the producing life of said field; that the field had been developed upon such theory; and that to deny defendant the same right would amount to an unjust discrimination, denial of equal protection of the laws and a taking of his property without due process (R. 23-24).

The plaintiffs addressed special exception to these allegations on the grounds (a) that defendant had an adequate remedy in filing suit to cancel the permits complained of, and that such allegations were irrelevant, immaterial and prejudicial; and (b) the defendant was not entitled to uphold his permits on such ground because the same right being applicable to all other operators, there would result a complete destruction of the spacing rule and its usefulness as a conservation measure (R. 33-34).

The court sustained said exceptions, thereby depriving Hinchliffe of proving the facts alleged and of using the same as a defense, and the petitioner reserved an exception to such ruling (R. 39).

3. That the Railroad Commission of Texas had prior to the time of the granting of the permits to petitioner granted numerous permits in the East Texas Oil Field to other persons similarly situated to petitioner where all of the factors and conditions surrounding the granting of such permits were the same as surrounded petitioner and his property on which the permits in question were granted (R. 24).

Plaintiffs specially excepted to such allegations because (a) irrelevant, immaterial and prejudicial, (b) the legal conclusion of the pleader, and (c) vague and indefinite (R. 34).

The trial court sustained such exception and the petitioner reserved an exception to such ruling of the court (R. 39).

4. That to set aside the orders of the Railroad Commission in granting the permits to him under the circumstances alleged where others had been granted permits under the same circumstances would constitute an unlawful discrimination against the defendant (R. 24).

The plaintiffs specially excepted to such allegations because (a) they were illegal, immaterial and prejudicial and a legal conclusion; (b) if defendant's permit is otherwise shown to be illegal, it could not be upheld on the ground that permits have been granted to others under a similar condition, as it would bring about complete destruction of the spacing rule; and (c) the defendant had an adequate remedy by filing suit (R. 35).

The trial court sustained such special exception and the petitioner reserved an exception to such ruling of the court (R. 39).

5. That his leasehold had been proven productive of oil and gas, and that under the settled law of the State of Texas, which constituted a rule of property at the time of the acquisition of the property by him, the owner of the leasehold had no right of ownership of oil and gas in place, but was bound by the rule of capture; that such was his vested right and unless the permits at issue were granted to him, oil would be drained from beneath his property by wells of adjacent leaseholders, and that without the wells, he could not exercise the rule of capture, which was his only property right and would, thereby, have his property taken without due process of law and be denied the equal protection of the laws guaranteed him by the Constitution (R. 25).

The plaintiffs directed a special exception to such allegations on the basis that such allegations were but the legal conclusions of the pleader and were irrelevant, immaterial and prejudicial (R. 35).

The trial court sustained such exception and the petitioner reserved an exception to such ruling of the court (R. 39).

The trial was to a jury. At the conclusion of the presentment of evidence, the trial court withdrew the case from the jury and entered judgment for the petitioners (R. 39). The petitioner duly excepted to such action and judgment of the court (R. 40).

An appeal from said judgment was taken by the petitioner to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin, which affirmed the judgment. Volume 182, S. W. (2d Series) page 368. The Supreme Court of Texas refused writ of error, application for which was timely presented by the petitioner as a matter of right under Texas law. The judgment became final upon the overruling of petitioner's motion for rehearing by the Supreme Court of Texas on the 20th day of December, 1944. The whole record is before the court on this application which is made and filed within the time limits prescribed by law and the rules of this court.

The principal questions involved on said appeal were the actions of the trial court in sustaining the exceptions to petitioner's answer (1 through 5, ante).

II

Reasons Relied On for the Allowance of the Writ

1. The said Court of Civil Appeals decided the federal question of substance as to an unjust discrimination, denial of equal protection of the laws and a taking of property without due process contrary to the rights granted by the U. S. Constitution in favor of the respondents herein by holding that the petitioner should not be allowed to present evidence that a vast number of permits in exception to Rule 37 had been granted in the East Texas field upon the ground and reason that such permits would respectively increase the ultimate recovery of oil solely by reason of the fact

that the more wells that are drilled the greater will be the recovery of oil from such field; that such wells are now operating and will continue to so do during the producing life of said field; that the field had been developed upon such theory; and that to deny defendant the same right would amount to an unjust discrimination, denial of equal protection of the laws and a taking of his property without due process, which decision is not in accord with the decisions of this court, including the cases of *Truax* v. *Corrigan*, 257 U. S. 312, 66 L. ed. 254; *Rogers* v. *State of Alabama*, 192 U. S. 226, 48 L. ed. 417.

2. The said Court of Civil Appeals decided the federal question of substance as to an unjust discrimination of the petitioner contrary to the rights granted by the U. S. Constitution in favor of the respondents by holding that the petitioner should not be allowed to present evidence that the Railroad Commission of Texas had, prior to the time of the granting of the permits to petitioner, granted numerous permits in the East Texas Oil Field to other persons similarly situated in petitioner, where all of the factors and conditions surrounding the granting of such permits were the same as surrounded petitioner and his property on which the permits in question were granted, and to set aside the orders of the Railroad Commission in granting the permits to him under the circumstances alleged where others had been granted permits under the same circumstances would constitute an unlawful discrimination against the petitioner, which decision is not in accord with the decisions of this court, including the cases of *Truax* v. *Corrigan*, 257 U. S. 312, 66 L. ed. 254; *Rogers* v. *State of Alabama*, 192 U. S. 226, 48 L. ed. 417.

3. The said Court of Civil Appeals decided the federal question of substance as to an unjust discrimination of the petitioner contrary to the rights granted by the U. S. Con-

stitution in favor of the respondents by holding that the petitioner should not be allowed to present evidence that his leasehold had been proven productive of oil and gas, and that under the settled law of the State of Texas, which constituted a rule of property at the time of the acquisition of the property by him, the owner of the leasehold had no right of ownership of oil and gas in place, but was bound by the rule of capture; that such was his vested right and unless the permits at issue were granted to him, oil would be drained from beneath his property by wells of adjacent leaseholders, and that without the wells, he could not exercise the rule of capture, which was his only property right and would, thereby, have his property taken without due process of law and be denied the equal protection of the laws guaranteed him by the Constitution, which decision is not in accord with the decisions of this court, including the cases of *Truax* v. *Corrigan*, 257 U. S. 312, 66 L. ed. 254; *Rogers* v. *State of Alabama*, 192 U. S. 226, 48 L. ed. 417.

4. The said Court of Civil Appeals decided the federal question of substance as to an unjust discrimination of the petitioner contrary to the rights granted by the U. S. Constitution in favor of the respondents by holding that the petitioner should not be allowed to present evidence that the Railroad Commission of Texas is the agency charged by law with the duty of administration of Rule 37, and that such agency in the administration of such rule had construed same as permitting an exception to be granted under the terms of such rule to applicants upon a showing of a prevention of waste by the increasing of the ultimate recovery of oil from the drilling and production of such well; that this amounted to a practical construction of the rule and such practical construction was plead in bar to the suit, which decision is not in accord with the decisions of this court, including the cases of *Truax* v. *Corrigan*, 257

U. S. 312, 66 L. ed. 254; *Rogers* v. *State of Alabama*, 192 U. S. 226, 48 L. ed. 417.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of the said Court of Civil Appeals had in the case numbered and entitled on its docket, No. 9459, *W. W. Hinchliffe, Appellant* v. *The Texas Company et al., Appellees*, to the end that this cause may be reviewed and determined by this court as provided by the statutes of the United States; and that the judgment herein of said Court of Civil Appeals be reversed by the court, and for such further relief as to this court may seem proper.

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